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Oppenheimer Camera Products, Inc.,
16 and Marty Oppenheimer

17 **UNITED STATES DISTRICT COURT**

18 **CENTRAL DISTRICT OF CALIFORNIA WESTERN DIVISION**

19 **VOICE INTERNATIONAL, INC., a**
20 **California corporation; DAVID**
GROBER, an individual,

21 **Plaintiffs,**

22 **vs.**

23 **OPPENHEIMER CINE RENTAL,**
24 **LLC, a Washington corporation;**
25 **OPPENHEIMER CAMERA**
26 **PRODUCTS, INC., a Washington**
27 **corporation; MARTY**
28 **OPPENHEIMER, an individual;**
and DOES 1- 10, inclusive,

Defendants

Case No.: 2:15-cv-08830-JAK(KS)

Joint Rule 26(f) Report

Date: March 14, 2106

Time: 8:30 a.m.

Place: Courtroom 750
Los Angeles - Roybal

1 Pursuant to Rule 26(a)(1) and 26(f) of the Federal Rules of Civil Procedure
2 and the Court's Scheduling Conference Order Issued on January 14, 2016,
3 Plaintiffs Voice International and David Grober ("Plaintiffs") and Defendants
4 Oppenheimer Cine Rental, LLC, Oppenheimer Camera Products, Inc., and Marty
5 Oppenheimer ("Defendants") jointly report to the Court.

6 **A. Statement of The Case**

7 **1. Plaintiff's Statement**

8 Plaintiff David Grober is an individual and his company Voice International,
9 Inc., a California corporation, is doing business as Motion Picture Marine.

10 Defendant Oppenheimer Cine Rentals, along with Oppenheimer Camera
11 Products, are Washington companies with offices in the Seattle area. They are
12 engaged in the business of producing, distributing, selling and renting film and
13 video production equipment including camera stabilizers. Defendant Marty
14 Oppenheimer is the owner of Oppenheimer Cine Rental and Oppenheimer Camera
15 Products and an individual personally involved in and coordinates, supports and/or
16 directs the alleged infringing activities of the other Defendants.

17 Plaintiffs' U.S. Patent No. 6,611,662 "Autonomous, Self Leveling, Self
18 Correcting Stabilized Platform" describes and claims a stabilizer for keeping a
19 camera stable on a moving platform, such as a boat. Grober won both Academy
20 and Emmy awards for technical achievement for the invention. The '662 patent is
21 the subject of *Grober v. Mako Products, Inc.*, currently pending in this District as
22 case no. 2:04-cv-08604. The validity of the '662 patent was previously affirmed in
23 U. S. Patent Office reexamination proceeding no. 95/000,092.

24 Defendants rent and or sell the Makohead device thereby infringing the '662
25 patent. From at least 2011 to the present, Defendants have rented, used, and/or
26 rented out and sold the infringing MakoHead to video and film productions located
27 in this District and elsewhere and have received over \$120,000 in income from their
28 infringing activities. Defendants willfully infringed the '662 patent, with full

1 knowledge of the earlier filed *Grober v. Mako Products* case still pending in this
2 judicial district in which Oppenheimer Cine Rental was originally a named
3 Defendant. The case is before visiting Judge Zouhary from the Northern District
4 of Ohio, Toledo, with trial set for May 14, 2016.

5 Defendants previously withheld evidence, and made false and misleading
6 statements concerning their infringing activities, including stating they had no
7 documents relating to sales or rentals of the MakoHead. But Plaintiffs now have
8 documents produced by other parties in the *Grober v. Mako Products* case showing
9 Defendants engaged in renting the accused MakoHead device on multiple
10 occasions. Plaintiffs have been and are now being damaged by Defendants
11 infringing the '662 patent, entitling Plaintiffs to monetary and injunctive relief.

12 Below, Defendants contend that because Oppenheimer was dismissed for
13 lack of personal jurisdiction in 2008, that somehow means Defendants can *never* be
14 required to answer to Plaintiff in this judicial district. The law is otherwise. As per
15 Plaintiff's Opposition to Defendants' Motion to Dismiss, personal jurisdiction over
16 Defendants is established by their 2011 – 2015 infringing acts in this judicial
17 district, including those of Marty Oppenheimer. Under the patent law, it is not
18 necessary for Plaintiff to pierce the corporate veil or prove Mr. Oppenheimer is the
19 alter ego of the corporate entities, to make out an infringement claim against him.
20 Given Defendants' unreasonable refusal to participate in the discovery plan below
21 and attached, the Court should adopt Plaintiff's dates.

23 **2. Defendant's Statement**

24 This lawsuit marks the second time Plaintiffs Voice International, Inc. and
25 David Grober ("Plaintiffs") have filed a lawsuit against Defendant Oppenheimer
26 Cine Rental, LLC. ("Oppenheimer Cine Rental") in this District alleging patent
27 infringement associated with the MakoHead stabilizer equipment. In the first
28 lawsuit, United States District Court for the CD Cal. Case No. 04-cv-8604-JZA

1 (OPX) (“Oppenheimer I”), this Court dismissed the lawsuit against Oppenheimer
2 Cine Rental for lack of personal jurisdiction. Plaintiffs thereafter lost an appeal to
3 the Federal Circuit Court of Appeals. The Federal Circuit held, among others, that
4 Plaintiffs “did not show that out of hundreds of available products, the accused
5 Makohead, was ever shipped to California.” See *Grober*, 686 F.3d at 1346.

6 Since the time the District Court and Federal Circuit issued their opinions
7 in Oppenheimer I, nothing has changed in the way Oppenheimer Cine Rentals
8 supplies its MakoHead stabilizers which would warrant this Court exercising
9 jurisdiction over Oppenheimer Cine Rental. As before, as shown in Defendants’
10 pending Motion to Dismiss which this Court is scheduled to hear on March 14,
11 2016, Oppenheimer Cine Rental supplies the MakoHead stabilizer in the States of
12 Washington, Oregon, Alaska and British Columbia, irrespective of where the
13 company’s clients are based. Oppenheimer Cine Rental does not supply the
14 MakoHead stabilizers for use in California. The decisions of the District Court and
15 Federal Circuit in Oppenheimer I so held and nothing has changed since the time
16 they were decided. In fact, Oppenheimer Cine Rental does not avail itself of any of
17 the benefits or protections of California law in its business dealings with its
18 customers. In fact, all of its equipment rental agreements expressly state that any
19 dispute arising between the parties are governed solely under the laws of the State
20 of Washington with venue in the event of a dispute in Kings County, Washington.

21 Plaintiffs have also now named new Defendants in this second lawsuit,
22 including Oppenheimer Camera Products, Inc. (“Oppenheimer Camera Products”)
23 and Marty Oppenheimer himself individually. However, for its part, Oppenheimer
24 Camera Products is a dealer of products manufactured by third parties, but has
25 never served as a dealer of Mako Products (much less sold such Products in
26 California). In fact, this separate company is also a Washington based company
27 and not subject to jurisdiction in California. Nor is Marty Oppenheimer, who is a
28 resident of the State of Washington. While Plaintiffs now argue in their Opposition

1 to Defendants' Motion to Dismiss that Oppenheimer Camera Products is allegedly
 2 the same as or interchangeable with Oppenheimer Cine Rental and Marty
 3 Oppenheimer is allegedly the alter ego of Oppenheimer Cine Rental, even if these
 4 unsubstantiated allegations were true (which they are not), this would still not mean
 5 either of these two new Defendants are subject to jurisdiction in this Court. The
 6 reason is obvious – i.e., if Oppenheimer Cine Rental is not subject to jurisdiction in
 7 California neither are Oppenheimer Camera Products are Marty Oppenheimer
 8 based upon the claim they should be treated as if they were the same as
 9 Oppenheimer Cine Rental. Also, while Plaintiffs now make the “argument” in their
 10 Opposition to Defendants' Motion to Dismiss that these new Defendants are the
 11 same or alter egos of Oppenheimer Cine Rental, this is not pled in Plaintiffs'
 12 Complaint. As such, there are no grounds alleged in the Complaint to support any
 13 such claim or to assert jurisdiction over these two new Defendants now.

14 For these reasons, this case should be dismissed with prejudice once and
 15 for all when this Court hears Defendants' Motion to Dismiss on March 14, 2016.
 16 Until then, it is premature to schedule any further deadlines in this case.

17 18 **B. Subject Matter Jurisdiction**

19 This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and
 20 1338(a).

21 22 **C. Legal Issues**

- 23 1. Does accused Makohead infringe the patent-in-suit?
- 24 2. Are Defendants liable for infringement?
- 25 3. What damages should be awarded Plaintiff?
- 26 4. Are Defendants subject to personal jurisdiction in this Court?

D. Parties and Non-Party Witnesses

1. Plaintiff's key witness is David Grober.
2. Defendants key witness is Marty Oppenheimer.

E. Damages

Plaintiff seeks lost profits as well as actual damages Plaintiff sustained as a consequence of Defendants' knowing and willful acts of patent infringement, in an amount not yet determined but that will be ascertained during discovery. Plaintiff also seeks enhanced (treble) damages and attorney's fees.

Defendants deny liability and deny Plaintiffs are entitled to any damages in this action.

F. Insurance

None believed applicable at this time.

G. Non-Dispositive Motions

None.

H. Manual For Complex Litigation

Not applicable.

I. Status of Discovery

Discovery has commenced. Plaintiffs already served a first set of document requests.

Defendants believe discovery should be stayed pending a decision on Defendants' motion to dismiss for lack of jurisdiction.

1
2 **J. Discovery Plan**

3 Plaintiff seeks documents regarding Defendant's total sales and rentals of the
4 MakoHead, including profit statements and customer invoices. Plaintiff also seeks
5 all communications between Defendants, the manufacturer Mako Products (now
6 Oceanic Production Equipment), other rental houses renting the Makohead, as well
7 as with Defendants' customers.

8 The parties anticipate Rule 30(b)(6) depositions of each other by August
9 2016. Plaintiff will seek to depose at least Marty Oppenheimer and Jordan Klein,
10 Jr., Jordan Klein, Sr. and John Dann as to operative events.

11 There are no other applicable discovery rules or limitations that need to be
12 changed or imposed.

13 Defendants believe discovery should be stayed pending a decision on
14 Defendants' motion to dismiss for lack of jurisdiction.
15

16 **K. Discovery Cut-off**

17 Plaintiff proposes that the final day for completion of fact and expert
18 discovery, including all discovery motions, be November 15, 2016.

19 Defendants propose that no discovery cut-off date should be set until the
20 Court rules on Defendants' motion to dismiss for lack of jurisdiction.
21

22 **L. Expert Discovery Cut-Off**

23 Plaintiff proposes the following expert discovery cut-off dates:

- 24 1. Initial expert witness disclosures October 3, 2016.
25 2. Rebuttal expert witness disclosures October 17, 2016.
26 3. Expert discovery cut-off November 19, 2016.

27 Defendants propose that no expert discovery cut-off date should be set until
28 the Court rules on Defendants' motion to dismiss for lack of jurisdiction.

1
2 **M. Dispositive Motions**

3 Plaintiff anticipates making a summary adjudication motion following some
4 discovery. Plaintiff will move for summary adjudication that the accused
5 Makohead product infringes the patent-in-suit.

6 Defendant believes this Court should dismiss this action for lack of personal
7 jurisdiction over any named Defendant.

8
9 **N. Settlement/Alternative Dispute Resolution (ADR)**

10 No settlement negotiations have occurred so far.

11 Plaintiff proposes completion of mediation by September 12, 2016. Plaintiff
12 further proposes ADR procedure No. 1, the parties appearing before a magistrate
13 judge.

14 Defendant believes it is premature to schedule ADR proceedings until the
15 Court determines whether any Defendant is subject to personal jurisdiction in this
16 Court.

17
18 **O. Trial Estimate**

19 Jury trial lasting 4 days.

20 Defendant believes it is premature to schedule trial until the Court determines
21 whether any Defendant is subject to personal jurisdiction.

22
23 **P. Trial Counsel**

24 For Plaintiffs: Robert J. Lauson and/or a trial attorney to be named; David
25 Grober, pro se for himself.

26 For Defendant: James E. Dorshow

27
28 **Q. Independent Expert Or Master**

1 Not applicable.

2 **R. Timetable**

3 See Exhibit A attached.

4 Defendant believes it is premature to schedule ADR proceedings until the
5 Court determines whether any Defendant is subject to personal jurisdiction in this
6 Court.

7 **S. Other Issues**

8 None.

9 **T. Patent Cases:** Dates for claim construction and Markman hearings are found
10 in Exhibit A. Given Defendant already participated in a Markman hearing in the
11 case *Grober v. Mako Products*, a second Markman hearing may be inappropriate.

12 **U. Magistrate Judge**

13 The parties decline to consent.

14 Respectively Submitted,

15 DATED: February 29, 2016

16 LAUSON & TARVER LLP

17 By: /s/ Robert J. Lauson

18 Robert J. Lauson, Esq.
19 Attorney for Plaintiff
20 VOICE INTERNATIONAL

21 DATED: February 29, 2016

22 By: /s/ David Grober

23 David Grober
24 In Pro Per

25 DATED: February 29, 2016

26 FOX ROTHSCHILD, LLP

27 By: /s/

28 James E. Doroshow, Esq.
Attorney for Defendant
OPPENHEIMER CINE RENTAL